III

THE CONSTITUTION OF 1920

THE constitution, which was finally promulgated on 5 October 1920, represented in the main a compromise between the views of the Christian Socialists and the Social Democrats.

(i) *The Democratic Principle*

All parties were agreed that the new constitution must be a democratic one. It was therefore laid down in the first Article that "Austria is a democratic Republic. Her laws are made by the people."[1] A great effort was made to secure effectively, by careful legislation, the democratization of the whole machinery of government. It is only necessary, for instance, to refer to the detailed provisions made by Articles 95 and 115–20 to ensure the democratization of the machinery of government in the Provinces. In the case of these Articles, zeal for the triumph of the democratic principle overcame objections to provisions which constituted a striking encroachment on provincial rights.

Again, the importance attached by the framers of the constitution to the firm establishment of the democratic principle is shown by the provisions dealing with the organization of the

[1] Dr. Kelsen points out that this statement is without much legal significance. 'Ob Österreich eine demokratische Republik sei oder nicht, das zu beurteilen ist ausschliesslich u. allein Sache der Rechtserkenntnis, nicht des Rechtes; dessen Sache ist es eine demokratische Republik zu sein oder nicht zu sein.' And the second part of the article is misleading in so far as it implies that direct government by the people is the normal method of legislative procedure. Actually, direct government can only be used under exceptional circumstances (vide Articles 41–6 of the Constitution). (*Juhrbuch des öffentlichen Rechts*, 1922, vol. xi, p. 238.) These statements may be compared with, for instance, the first clause of Article 87, 'Die Richter sind in Ausübung ihres richterlichen Amtes unabhängig', and with the first clause of Article 91, 'Das Volk hat an der Rechtsprechung mitzuwirken', neither of which statements has in itself any legal significance.

2: MacDonald S-4 (no date) 1946 EK1 Austria EK1

suffrage. In 1907 the suffrage had been extended for State elections so that all males over twenty-four years of age had an active vote, and all males over twenty-nine had a passive one. These age-limits were now reduced to twenty and twenty-four years respectively; and the right to vote was extended to women.

Whereas in pre-war days no attempt had been made to regulate the suffrage in those Provinces where the old curial system, abolished for Reichstag elections in 1907, had persisted up to the war, it was now expressly laid down that the right to vote in provincial elections might never be more restricted than it was for elections to the National Council.[1] This provision is another example of a striking incursion on provincial rights in the interests of democracy.

By Article 26, (5), it was laid down that the right to elect to the National Council could only be suspended by judicial decree,[2] and that it was intended that this right should only be withdrawn for reasons of the utmost gravity is suggested by Article 142, (3), which decrees that even in the case of an adverse judgement by the Constitutional Court in a case of impeachment of an official, a temporary loss of political rights should only follow if the case were one of particularly grave circumstances. And by Article 149, (2), Article 20 of the Fundamental Law of 21 December 1867 and the Law of 5 May 1869, dealing with temporary suspension of these rights, were both expressly repealed.

It was felt, however, that the establishment and safeguarding of universal suffrage was not in itself sufficient to ensure the triumph of the democratic principle. Before the war, for instance, although a comparatively wide, direct and secret suffrage had been in force, the equality of the suffrage had

[1] Vide Article 95, (2).

[2] By this Article, the arrangement by which women under the surveillance of the police were deprived of the right to vote (Law of 18 December 1918, 139) was abrogated. Verdier suggests that Dr. Kelsen felt that no one should be subjected to the loss of so fundamental a right, 'par une simple décision administrative qui risque souvent, et en particulier lorsqu'elle est prise par la police, d'être arbitraire'. (Verdier, *La Constitution fédérale de la Republique d'Autriche*, Paris, 1924, p. 115.)

2: MacDonald S-4 (no date) 1946 EK1 Austria EK1

been to a large extent illusory, because of the inequality in apportionment of mandates to the constituencies, which differed greatly in size. The introduction of proportional representation had to some extent removed these inequalities. And by a Law of 18 December 1918 mandates were redistributed over the constituencies. The new allocation was calculated on the basis of the census published in 1910. But Verdier points out that the constituencies still received mandates only in rough approximation to the number of their inhabitants.[1] And Kelsen himself admits that the weight of the individual vote varied not a little in the different constituencies.[2] However, it was considered useless to reapportion mandates until the boundaries of the State had been finally settled by the Treaty of St. Germain.[3] Meantime, the inequality of the existing arrangement had been increased by subsequent movements of population. However, by Article 26, (2), of the 1920 constitution, the principle of the apportionment of mandates to the constituencies on a basis strictly proportional to their populations was established. And the Electoral Law of 11 July 1923 laid down the method to be used for ascertaining the correct apportionment.[4]

It was felt by many, however, that the division of the electorate into constituencies in itself constituted a violation of the democratic principle, in that such a division resulted in a curtailment of the freedom of members, who then tended to act as the delegates of their constituents rather than as free representatives of the whole people. Renner, in particular, emphasized the dangers of this system. He feared that the politics of the State might come to turn upon local issues, while what should have been the essential questions, the different views of the various parties, would fade into the

[1] Verdier calculates that in Salzburg 18,116 persons were represented by one deputy, while in south-west Vienna 28,332 persons had only one deputy (ibid., p. 116).

[2] *Die Verfassungsgesetze der Republik Österreich*, vol. ii, p. 7.

[3] Verdier, op. cit., pp. 116–17

[4] It is probable that the inequalities of the previous system were somewhat exaggerated, as when fresh elections were held on 21 October 1923, in accordance with the new census of March and the Electoral Law of July, only slight alterations were found to be necessary.

641 background.[1] He further pointed out that such a state of
666 affairs would tend to produce a deadlock in the National
642 Council, for as members would be bound by the local views of their constituents, they would be unable to negotiate the necessary compromises with their colleagues. Moreover, the candidate prepared to offer the most bribes to his constituents was likely to be elected.[2]

666 It is clearly undeniable that the division of a country into
642 constituencies must, in so far as it has any political consequence at all, tend to tip the balance of a constitution in favour of direct democracy, by encouraging control of particular members by particular territorial groups. It is, therefore, not surprising that the constituency system met with opposition, particularly from the Social Democrats, for the tendency of left-wing political theorists at that time was to revert to the nineteenth-century idea of the omnipotence of Parliament and its freedom from the electorate once it had been elected.

The constitution of 1920, in this, as in so many other instances, represented a compromise. By Article 56, for instance, it was expressly laid down that members of the National Council and the Federal Council should not be bound by instructions. But the constituency system was maintained. On the other hand, the closed list system was introduced, thus lessening the direct connection between members and their constituents.[3] And for the majority system there was substi-

[1] Speech by Renner in the Provisional National Assembly on the occasion of the introduction of the Electoral Law of 18 December 1918. 'Die Wahlkreiseinteilung gab der Landverteilung ein imperatives Mandat, u. stellte sie unter die Peitsche einer rücksichtslosen Agitation, die ihnen jede Freiheit der Entschliessung nahm . . . Dass wir bisher nicht jene grosse Parteiformation nach allgemeinen Weltanschauungen herausbilden konnten wie in anderen Ländern, geht zum guten Teil auf diese mechanische Spaltung der Wählerschaft zurück.' (Quoted by Kelsen, op. cit., vol. ii, p. 43.)

[2] In fact, however, Renner's fears proved to be groundless. The difficulty lay rather in the fact that the connection between electors and their representatives was so remote that the former could not exercise any control at all.

[3] In point of fact, the closed list system, in that it inevitably tended to make members dependent on their party caucuses, was just as liable to lead to a diminution in the authority of Parliament through the subordination of its members to extra-parliamentary groups, as was the constituency system.

This device was criticized as unsatisfactory by Adamovich (*Grundriss des österreichischen Staatsrechts*, Vienna, 1927, p. 136). In May 1927 a 'minis-

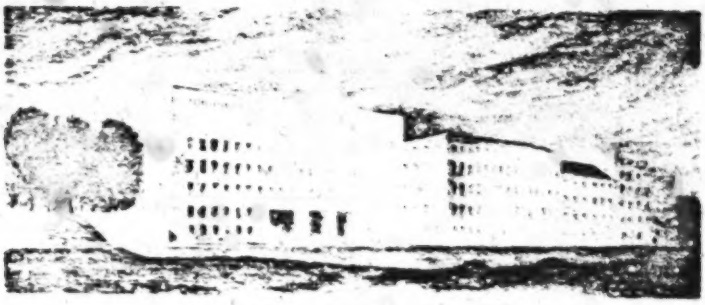
3: Hiscocks G-4, 5 (1946-1949) 1953 EK1 Austria EK1

should be incorporated in the German Republic, in the event of the peace treaty permitting such a development. The Provincial Assemblies of Salzburg and the Tyrol decided to hold plebiscites on the subject, both of which resulted in overwhelming majorities in favour of union with Germany. In the Tyrol 144,342 votes were cast for the *Anschluss* and 1,794 against. In Salzburg the figures were 103,000 for and 800 against.

In spite of these clear indications of popular opinion, the victorious Powers opposed any increase in German territory. The Treaty of St. Germain, in September 1919, established Austria as an independent State and forebade any modification of its independence without the consent of the League of Nations. In 1931, when the economic crisis led the Austrian and German Governments to plan a Customs Union between the two countries, the project was forbidden as contrary to the treaty terms. C. A. Macartney's laconic statement that French fear of the Germans on the Rhine was 'an insufficient reason for condemning Austria to be alive' summed up the feelings of many Austrians.

In addition to its fundamental weaknesses, the Austrian Republic lacked the required conditions for successful democratic government.

A prerequisite of sound democracy is a sense of common purpose. Party rivalry is essential to the democratic system, but it must take place within the framework of loyalty to the State. On the whole, in the First Austrian Republic party sentiment was stronger than patriotism. Of the two main political parties, the Social Democrats were convinced, though moderate, disciples of Marx, believing in the international character of Socialism and not uninfluenced by Marx's theory of class dictatorship. The Christian Socialists, though made up of peasants and industrialists as well as clericals, were predominantly Catholic and traditionalist in sympathy, many of them with monarchist leanings. Both sides tended to attach more importance to realizing their political ideals than to establishing effective government in the new State.



Clemens Holzmeister: Austrian Broadcasting House.

The end of the First World War and the fall of the Austro-Hungarian Monarchy had similar paralysing results for Vienna as did the end of the Second World War, when there was not only a collapse of the existing regime, but in addition extensive war damage to be faced. The general reorganisation of the State which took place after 1918 proved less difficult, not only because there had been no actual war damage in Vienna itself, but also because the forces released by the conclusion of the war were not hindered in their development by the pressure of an occupation. Nevertheless, it was years before the Austrian economy and the capital city had so far recovered that it was possible to go beyond efforts to satisfy the daily needs of the population and start constructive municipal schemes.

The political revolution of November 1918 secured the full triumph of democratic principles. Universal, equal and direct suffrage, with a secret ballot, was extended to women and, for the first time, applied to the election of members of a Vienna city council. As a result the influence of the masses of citizens which had until then been artifically suppressed now took full effect on the composition of the Council Chamber. Power in the municipal assembly consequently went to the Party of the workers, the Social-Democrats. By securing the majority in the City Council the latter found themselves in a position to put their principles into practice in various fields of municipal activity. During the 15 years after the First World War that the Social-Democrats were able to run the municipal affairs of Vienna, entirely new principles were applied to the administration of public welfare, housing, the conduct of public utility services, the educational system and to questions of personnel. As the basis and support of all these innovations a new financial policy was devised and put into practice. The successful achievements of this exceptionally fruitful period of Vienna municipal administration—it must be remembered that they were not carried out during a period of general prosperity and easy-living,